

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-05-IH-2348
)	
Telrite Corporation)	NAL/Acct. No. 200832080084
)	
Apparent Liability for Forfeiture)	FRN No. 0007-9604-20
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE & ORDER

Adopted: April 16, 2008

Released: April 17, 2008

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find Telrite Corporation (“Telrite”) apparently violated sections 52.17(b), 52.32(b), 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission’s rules by willfully or repeatedly filing inaccurate Telecommunications Reporting Worksheets (“Worksheets”) that grossly under-reported its interstate revenue.¹ Telrite also apparently violated section 254(d) of the Communications Act of 1934, as amended (the “Act”), and sections 54.706 and 54.711 of the Commission’s rules by willfully or repeatedly failing to contribute fully to the Universal Service Fund (“USF”);² section 225(b)(1) of the Act and section 64.604(c)(5)(iii)(A) of the Commission’s rules by willfully or repeatedly failing to contribute fully to the Telecommunications Relay Services Fund (“TRS Fund”);³ section 251(e)(2) of the Act and section 52.17(a) of the Commission’s rules by willfully or repeatedly failing to make full North American Numbering Plan (“NANP”) administration contributions; section 251(e)(2) of the Act and section 52.32(a) of the Commission’s rules by willfully or repeatedly failing to make full Local Number Portability (“LNP”) contributions;⁴ and section 9(a)(1) of the Act and sections 1.1154 and 1.1157(b)(1) of the Commission’s rules by willfully or repeatedly failing to pay fully regulatory fees program payments when due.⁵ Based on our review of the facts and circumstances, we find that Telrite is apparently liable for a total forfeiture of \$924,212.

2. We order Telrite to submit within thirty days a report supported by a sworn statement or declaration under penalty of perjury of a corporate officer setting forth in detail its plan to come into

¹ 47 C.F.R. §§ 52.17(b), 52.32(b), 54.711(a) and 64.604(c)(5)(iii)(B).

² 47 U.S.C. § 254(d) and 47 C.F.R. §§ 54.706 and 54.711. The Telecommunications Act of 1996 amended the Communications Act of 1934. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ 47 U.S.C. § 225(b)(1) and 47 C.F.R. §§ 64.604(c)(5)(iii)(A).

⁴ 47 U.S.C. § 251(e)(2); 47 C.F.R. §§ 52.17(a) and 52.32(a).

⁵ 47 U.S.C. § 159(a)(1); 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

compliance with the reporting and payment obligations discussed herein. We further order Telrite to file with the Universal Service Administrative Company (“USAC”) within thirty days annual Worksheets reporting accurate annual revenue for 2005.

II. BACKGROUND

3. The Act codified Congress’s historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁶ In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the universal service fund based upon their interstate and international end-user telecommunications revenues.⁷ The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF.⁸ Failure by some providers to pay their share into the USF skews the playing field by giving non-paying providers an economic advantage over their competitors, who must then shoulder more than their fair share of the costs of the universal service fund. The Universal Service Administrative Company (“USAC”) currently administers the USF.⁹ USAC bills carriers each month, including Telrite, based on their quarterly contribution amount.¹⁰ Consistent with the Debt Collection Improvement Act of 1996 (“DCIA”),¹¹

⁶ 47 U.S.C. § 254(d).

⁷ 47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier’s projected, rather than historical, revenues. *Id.* See also *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24969-74, ¶¶ 29-39 (2002) (“*Interim Contribution Order*”).

⁸ See 47 U.S.C. § 254(d) (“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) (“*2006 Contribution Methodology Order*”), petition for review denied, and vacated in part on other grounds, *Vonage Holding Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

⁹ 47 C.F.R. § 54.701(a).

¹⁰ See, e.g., *Interim Contribution Order*, 17 FCC Rcd at 24971-72, ¶ 35; *Federal-State Board on Universal Service, Further Notice of Proposed Rulemaking and Order*, 15 FCC Rcd 19947, 19954, ¶ 17 (2000); *Federal-State Joint Board on Universal Service, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, and Sixth Report and Order in CC Docket No. 96-262*, 15 FCC Rcd 1679, 1687, ¶ 18 (1999); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Board on Universal Service, Second Order on Reconsideration*, 12 FCC Rcd 22423, 22425, ¶ 3 (1997). Carriers must pay by the date shown on the invoice from the Administrator. 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which

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USAC transfers USF contributions more than 90 days delinquent to the Commission to collect the outstanding debt.¹²

4. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”¹³ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services.¹⁴ Pursuant to section 64.604(c)(5)(iii)(A) of the Commission’s rules, every carrier that provides interstate telecommunications services must contribute to the TRS Fund based upon its end-user revenues.

5. In addition, section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an

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payments must be made.”) *See, e.g.*, “Proposed Second Quarter 2006 Contribution Factor,” Public Notice, 21 FCC Rcd 2379 (Wireline Comp. Bur. 2006) (“Contribution payments are due on the date shown on the invoice.”). *See also* 47 C.F.R. § 54.713(b) (noting that if a USF “contributor fails to make full payment on or before the date due date of . . . the monthly invoice provided by the Administrator, the payment is delinquent.”). *Id.*

¹¹ *See* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996). In 2004, the Commission adopted rules implementing the DCIA requirements. *See Amendment of Parts 0 and 1 of the Commission’s Rules*, Report and Order, 19 FCC Rcd 6540 (2004) (“*DCIA Order*”). In its Order, the Commission codified procedures at 47 C.F.R. § 1.1910, the “red light rule,” to extend and clarify existing policies in the management of the Commission’s accounts, and to withhold action on applications or other requests for benefits by delinquent debtors, and ultimately to dismiss such applications or other requests if the delinquency is not resolved. *See* 47 C.F.R. § 1.1910; *DCIA Order*, 19 FCC Rcd at 6541-45 ¶¶ 3-15. The DCIA rules specify that the term “Commission” includes the USF, TRS Fund, “and any other reporting components of the Commission.” *See* 47 C.F.R. § 1.1901(b). Thus, the Commission has determined that unpaid obligations to the USF, TRS, LNP, and the cost recovery mechanisms for NANP administration are subject to the DCIA.

¹² Effective July 1, 2003, USAC implemented new collection procedures as required by the DCIA and the Commission. Pursuant to those procedures, invoices for USF contributions that become over 90 days delinquent are transferred to the Commission for further collection. *See* <http://www.universalservice.org/fund-administration/contributors/understanding-your-invoice/important-invoicing-deadlines.aspx>. Debt collection procedures may include further administrative efforts both by the Commission and the United States Treasury or, as appropriate, the Commission may refer the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917. Collection efforts may result in additional charges, to include interest and penalties, as provided under 31 U.S.C. § 3717, and administrative charges pursuant to 47 C.F.R. §§ 1.1940 and 54.713, 31 C.F.R. § 285.12(j).

¹³ 47 U.S.C. § 225(b)(1).

¹⁴ *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, ¶ 7 (1993). Telecommunications relay services enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users. Such services provide telephone access to a significant number of Americans who, without it, might not be able to make calls to or receive calls from voice-telephone users. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143, ¶ 5 (2000). The National Exchange Carriers Association (“NECA”) currently is responsible for administering the TRS Fund.

equitable basis.¹⁵ Section 251(e)(2) of the Act requires that “[t]he cost of establishing telecommunications numbering administration arrangements . . . shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”¹⁶ In carrying out this statutory directive, the Commission adopted section 52.17 of its rules, which requires, among other things, that all telecommunications carriers contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.¹⁷ In addition, the Commission adopted section 52.32 of its rules, which requires, among other things that all telecommunications carriers contribute toward the costs of local number portability on the basis of their end-user telecommunications revenues for the prior calendar year. Similar to USF and TRS, outstanding NANP administration and LNP obligations are also subject to the DCIA.¹⁸

6. Pursuant to section 9(a)(1) of the Act and section 1.1151 of the Commission’s rules, providers of interstate telecommunications services and other providers must pay regulatory fees to the Commission to cover the costs of certain regulatory activities.¹⁹ In particular, sections 1.1154 and 1.1157(b)(1) of the Commission’s rules require that interstate telecommunications carriers pay regulatory fees on the basis of their interstate and international end-user revenues.²⁰ Such fees must be paid on an annual basis,²¹ and failure to do so subjects a carrier to late payment penalties, as well as possible revocation of its operating authority.²² Further, under the Commission’s “red light rule,” action will be withheld on any application to the Commission or request for authorization made by any entity that has failed to pay its regulatory fees or any other program payment when due, such as USF or TRS Fund contributions, and if payment or payment arrangements are not made within thirty days from notice to the applicant, such applications or requests will be dismissed.²³

7. The Commission has established specific procedures for the administration of the universal service, TRS, and other associated federal regulatory programs. A carrier is required to file FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet (“annual Worksheet” or “Form 499-A”),²⁴ for the purpose of determining its USF, TRS, LNP, NANP administration and regulatory fee payments, and, with certain exceptions, to file Quarterly

¹⁵ 47 U.S.C. § 251(e)(1).

¹⁶ 47 U.S.C. § 251(e)(2).

¹⁷ 47 C.F.R. § 52.17(a).

¹⁸ See 47 C.F.R. § 1.1901 *et seq.*

¹⁹ Section 9(a)(1) of the Act directs the Commission to “assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.” 47 U.S.C. § 159(a)(1); *see also* 47 C.F.R. § 1.1151.

²⁰ See 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

²¹ 47 C.F.R. § 1.1157(b)(1). Section 1.1154 of the Commission’s rules sets forth the schedule of annual regulatory charges and filing locations for common carrier services. See 47 C.F.R. § 1.1154.

²² See 47 U.S.C. §§ 159(c)(1), (c)(3).

²³ 47 C.F.R. § 1.1910. The rule went into effect on November 1, 2004. See “FCC Announces Brief Delay in Enforcement of Red Light Rule,” Public Notice, 19 FCC Rcd 19452 (2004).

²⁴ See *FCC Form 499-A Telecommunications Reporting Worksheet – Annual Filing*, <http://www.fcc.gov/Forms/Form499-A/499a-2003.pdf> (April 2003) (“Annual Worksheet”).

Telecommunications Reporting Worksheets (“quarterly Worksheet” or “Form 499-Q”) to determine its monthly universal service contribution amounts.²⁵ These periodic filings trigger a determination of liability, if any, and subsequent billing and collection, by the entities that administer the regulatory programs.²⁶ For example, USAC, the administrator of the USF, uses the revenue projections submitted on the quarterly filings to determine each carrier’s monthly universal service contribution amount.²⁷ Similarly, the National Exchange Carriers Association (“NECA”) is the TRS Fund administrator, and it uses the annual filings to determine each carrier’s TRS Fund contribution amount.²⁸ Carriers must timely pay their contribution invoices,²⁹ and the Commission’s rules explicitly warn contributors that failure to

²⁵ See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) (“*Quarterly Reporting Order*”). The first Quarterly Worksheet, reporting revenue data from the first quarter of 2001 (January 1 through March 31, 2001) was due May 11, 2001; thereafter, carriers report their revenues for the prior quarter by the beginning of the second month in each quarter (i.e., February 1, May 1, August 1, and November 1). See *Quarterly Reporting Order*, 16 FCC Rcd at 5755, ¶ 19 & n.32. See *FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2003) (“Quarterly Worksheet”). Upon submission of a Form 499-A registration, the carrier is issued a filer identification number by USAC, which is then associated with further filings by the company and is used to track the carrier’s contributions and invoices.

²⁶ See 47 U.S.C. §§ 225(d)(3); 254(d). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review*, Report and Order, 14 FCC Rcd 16602 (1999). The next year the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Carrier Selection Order*, 15 FCC Rcd at 16026.

²⁷ See 47 C.F.R. § 54.709(a); “Telecommunications Carrier Registration Information Now Available Online,” Public Notice, DA 01-2465 (rel. Oct. 29, 2001). The Commission modified its rules on carrier contributions to the universal service fund. See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (“*Interim Contribution Order*”). As of April 1, 2003, USAC bases a carrier’s universal service obligation on the carrier’s projected collected revenue rather than its historic gross-billed revenue. *Interim Contribution Order*, 17 FCC Rcd at 24969-74, ¶¶ 29-39. Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) (“*Quarterly Reporting Order*”); 47 C.F.R. § 54.709(a).

²⁸ 64 C.F.R. § 64.604(c)(5)(iii)(B).

²⁹ See 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.”). See, e.g., “Proposed Third Quarter 2003 Contribution Factor,” Public Notice, 18 FCC Rcd 11442 (Wir. Comp. Bur. 2003) (“Contribution payments are due on the date shown on the [USAC] invoice.”). The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC or NECA. See 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(b) and 64.604(c)(5)(iii)(A). A carrier that does not file may not receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimis*. See *Globcom, Inc.*, Notice of Apparent Liability, 18 FCC Rcd 19890, 19896, ¶ 5, n. 22 (2003) (“*Globcom NAL*”)

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file forms or submit payments potentially subjects them to enforcement action.³⁰ Further, under the Commission's "red light rule," action will be withheld on any application to the Commission or request for authorization made by any entity that has failed to pay when due its regulatory program payment and if payment or payment arrangements are not made within 30 days from notice to the applicant, such applications or requests will be dismissed.³¹

8. Telrite is a toll reseller providing interstate and information services to residential and business customers.³² In 2004, Telrite purchased at an auction assets formerly associated with Onestar Long Distance, Inc. ("Onestar"). The projected closing of that sale was supposed to have occurred by December 31, 2004 but according to Telrite, because it had not obtained all necessary regulatory approvals by that date, the time period for closing remained open "for some period of time thereafter."³³ On November 14, 2005, USAC referred Telrite to the Bureau for potential enforcement action, alleging that Telrite failed to comply with the Commission's USF contribution and reporting rules. The Bureau initiated an investigation on December 15, 2005, by issuing a letter of inquiry ("LOI") to Telrite seeking information about Telrite's compliance with USF and other related regulatory obligations.³⁴ On January 31, 2006, Telrite responded to the LOI summarizing the circumstances of its purchase of the Onestar assets, reporting that it was involved in litigation with Onestar regarding Onestar's revenues.

9. On June 9, 2006, the Bureau sent a second LOI to Telrite seeking additional information about its acquisition of Onestar's assets, Onestar's revenues, and whether Telrite filed Worksheets that properly reported all revenue.³⁵ On July 10, 2006, Telrite admitted that it had failed to report either Telrite or Onestar intrastate revenue on its annual Form 499-A filed in March 2006. Telrite stated that it would file an amended Form 499-A accurately reporting revenue with USAC, and then provide this amended filing to the Bureau.³⁶

10. In November 2006, the Bureau sent a third LOI to Telrite that requested specific financial information regarding the company's revenues and directed Telrite to produce copies of any amended

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(subsequent history omitted). The instructions for the Worksheet include tables for carriers to determine their annual contributions. Providers whose annual contribution is less than \$10,000 are considered *de minimis* and exempted from contributing to the USF. 47 C.F.R. § 54.708.

³⁰ See 47 C.F.R. § 54.713.

³¹ *Id.* § 1.1910. The rule went into effect on November 1, 2004; see "FCC Announces Brief Delay in Enforcement of Red Light Rule," Public Notice, 19 FCC Rcd 19452 (2004).

³² See Telrite's 2006 FCC 499-A, Line 105, filed March 24, 2006.

³³ Letter from Michael G. Geoffroy, Corporate Counsel, Telrite Corporation, to Christopher Shields, Enforcement Bureau, Federal Communications Commission, dated January 31, 2006 ("LOI Response")

³⁴ Letter from Hillary S. DeNigro, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Telrite Corporation (Dec. 15, 2005) ("LOI").

³⁵ Letter from Hillary S. DeNigro, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Michael Geoffroy, Corporate Counsel, Telrite Corporation (June 9, 2006).

³⁶ Letter from Michael G. Geoffroy, Corporate Counsel, Telrite Corporation, to Christopher Shields, Enforcement Bureau, Federal Communications Commission, dated July 10, 2006 ("FLOI Response")

annual Worksheets it submitted to USAC since its response to the Bureau on July 10, 2006.³⁷ On December 27, 2006, Telrite submitted copies of its federal and state tax returns for 2004 and 2005 to the Bureau, but failed to produce an amended Form 499-A for the year 2006.

11. On April 2, 2007, Telrite filed its Form 499-A annual Worksheet for 2007, but failed to report any revenue. Telrite sent a copy of this Worksheet to the Bureau on April 19, 2007, explaining that the company intended “to remain compliant on USF filings” while it completed an audit of its billing and revenue data and, if necessary, Telrite would amend its prior filings.³⁸ In subsequent conversations with Commission staff, company representatives explained they were in the process of auditing the company’s 2006 revenue, and planned to file a revised 2007 Worksheet after completion of the audit. On July 12, 2007, Telrite filed with USAC and submitted to the Bureau a revised 2007 499-A reporting corrected 2006 revenue. Telrite’s revised 2007 499-A reported interstate revenue that was three times greater than the projected revenue and twice as much as the historical revenue the company reported on its 2006 quarterly Worksheets.

III. DISCUSSION

12. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.³⁹ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁴⁰ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁴¹ and the Commission has so interpreted the term in the section 503(b) context.⁴² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁴³ “Repeated” means that the act was

³⁷ Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Telrite Corporation (November 8, 2006).

³⁸ Letter from Michael Geoffroy to Christopher Shields, Esq., Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated April 19, 2007. Telrite did not specify which of its filings it would amend.

³⁹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

⁴⁰ 47 U.S.C. § 312(f)(1).

⁴¹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503)... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”)

⁴² *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

⁴³ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

committed or omitted more than once, or lasts more than one day.⁴⁴ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁴⁵ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁴⁶ As we set forth below, we conclude under this standard that Telrite is apparently liable for forfeiture for its apparent violations of the Act and the Commission's rules.

13. The fundamental issues in this case are whether Telrite apparently violated the Act and the Commission's rules by (1) willfully or repeatedly failing to make required contributions to the USF; (2) willfully or repeatedly failing to file accurate quarterly and annual FCC Form 499s; (3) willfully or repeatedly failing to make required contributions to the TRS Fund; (4) willfully or repeatedly failing to pay required regulatory fees to the Commission; (5) willfully or repeatedly failing to pay NANP administration obligations; and (6) willfully or repeatedly failing to pay LNP obligations. We answer these questions in the affirmative. Based on a preponderance of the evidence, we therefore conclude that Telrite is apparently liable for a forfeiture of \$924,212.

A. Telrite Apparently Failed To Pay Its Universal Service Fund Contributions

14. Section 54.706(c) of the Commission's rules unambiguously directs that "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs."⁴⁷ Telrite was required pursuant to section 54.706(b) of the Commission's rules to contribute to universal service mechanisms based upon its projected collected end-user telecommunications revenue filed on its quarterly Worksheets.⁴⁸ Telrite, however, failed to report accurately its revenues beginning with its November 2005 quarterly Worksheets and continuing through the filing of each quarterly Worksheet in 2006 and the first two quarterly Worksheets filed in 2007.⁴⁹ In addition, Telrite filed annual Worksheets in March 2006 and April 2007 that failed to report accurately revenue for 2006. The revenues reported on a carrier's Worksheet determine its USF obligation and monthly universal service contribution amounts. As a result of Telrite's inaccurate revenue reporting, we find that Telrite underpaid its monthly contributions to the USF in 2006, 2007 and 2008. The failure of interstate telecommunications service providers to fully report revenues has a direct and profound detrimental impact on the USF because it removes from the base of the fund telecommunications revenues that otherwise should have been included. By underreporting revenues, interstate telecommunications service providers shift to compliant contributors disproportionate economic burdens associated with the federal universal service program and gain an illegitimate competitive advantage.

⁴⁴ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

⁴⁵ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁴⁶ See, e.g., *SBC Communications, Inc.*, Order of Forfeiture, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

⁴⁷ 47 C.F.R. § 54.706(c).

⁴⁸ *Id.* § 54.706(b).

⁴⁹ Telrite admits in its LOI Response that its acquisition of the Onestar assets was delayed beyond December 31, 2004 and the period for closing the transaction remained open "for some period of time thereafter." See LOI Response at 1. As a result, it is unclear when in 2005 Telrite absorbed the Onestar assets and was first obligated to report revenue from those sources. Taking the most conservative approach, we find Telrite was first obligated to report the Onestar revenue when it filed its final Worksheet in 2005, the November 2005 Form 499-Q.

Consequently, carriers that underreport revenues thwart the very purpose for which Congress enacted section 254(d) – to ensure every interstate carrier “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁵⁰

15. We find that Telrite apparently violated the Act and the Commission’s rules when it failed to pay its full contribution obligations by the due date for each of its monthly invoices to USAC twelve times in 2006.⁵¹ The violations continued with each subsequent day on which it failed to make full payment.⁵² Moreover, each of those violations continue to this day because Telrite has not yet paid the full amount of the past due obligations from that year.⁵³ Similarly, we also find that Telrite apparently violated the Act and the Commission’s rules ten times in 2007 when it failed to pay its full contribution obligations by the due date for each of its monthly invoices to USAC. Each of those violations continues to this date because Telrite has not yet made remedial payments. Moreover, Telrite apparently continued to violate the Act and the Commission’s rules four times in 2007 and 2008 when it failed to make any monthly contribution payment to USAC. Each of those violations continues to this date because Telrite has not yet made remedial payments. Finally, we also find that Telrite apparently violated the Act and the Commission’s rules once thus far in 2008 when it failed to pay its full contribution obligations by the due date for its most recent monthly invoice to USAC. Consequently, based on a preponderance of the evidence, we find that Telrite has apparently violated section 254(d) of the Act and section 54.706 of the Commission’s rules by willfully or repeatedly failing to fully pay twenty-seven [as of mid-March 2008] monthly universal service contributions.

B. Telrite Apparently Filed Inaccurate Telecommunications Reporting Worksheets

16. Our rules clearly establish a carrier’s obligation to file periodic revenue information on FCC Form 499 Telecommunications Reporting Worksheets.⁵⁴ A carrier’s failure to file accurate Worksheets has serious implications for the USF, TRS, NANP, and LNP programs, as well as our regulatory fees. A carrier’s Worksheet prompts a determination of liability for, and subsequent billing and collection of, regulatory fees and contributions by the various fund administrators and affects all the contribution bases through the unified reporting system. Any failure to file accurate Worksheets harms these funds by removing from the contribution base telecommunications revenues that otherwise should

⁵⁰ 47 U.S.C. § 254(d).

⁵¹ See *Globcom NAL*, 18 FCC Rcd at 19900 ¶ 16 (“[E]ach month that Globcom failed to make its universal service contribution constitutes a separate violation of the Commission’s rules”).

⁵² See *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd at 4723, ¶ 35, n.105 (2006) (“*Globcom Forfeiture Order*”) (“Each failure to pay the amount due each month constituted a violation that continued for more than 10 days.”); *Matrix Telecom, Inc.*, Notice of Apparent Liability, 15 FCC Rcd. 13544 (2000); *Conquest Operator Services Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12525 ¶ 16 (1999). See also *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933 at ¶ 24 & n.69 (2007) (holding that failure to return excess Lifeline and LinkUp support is a continuing violation) (*VCI NAL*).

⁵³ Although Telrite may have paid the full amount billed on its USAC invoices in these months, the invoices reflected less than Telrite’s total obligations to USAC as a result of Telrite’s underreporting of revenue. The Commission has repeatedly stated that carriers must pay their obligations to USAC regardless of whether or not they receive a bill from USAC. See *Globcom Forfeiture Order*, 21 FCC Rcd at 4712 ¶ 5; *BCE Nexxia Corp.*, Notice of Apparent Liability, 20 FCC Rcd 15121, 15124, 15126 ¶¶ 10, 15 (2005).

⁵⁴ *Id.*

be included, thereby shifting to compliant carriers the additional economic burdens associated with contributing to the funds.

17. Telrite, as a reseller of toll services, must file Worksheets with USAC reporting accurate historical and projected telecommunications revenue. As described above, Telrite failed to report all of its eligible, assessable revenue on its Worksheets filed in 2005, 2006 and 2007. Based on a preponderance of the evidence, we find that Telrite has apparently violated sections 52.17(b), 52.32(b), 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission's rules by willfully or repeatedly filing inaccurate Forms 499-Q quarterly Worksheets throughout 2005, 2006 and 2007 and by willfully or repeatedly filing inaccurate Forms 499-A annual Worksheet in March 2006 and on April 2, 2007.

C. Telrite Apparently Failed To Pay Its TRS Fund Contributions

18. As a carrier providing interstate telecommunications service, Telrite was obligated to contribute to the TRS Fund on the basis of its end-user telecommunications revenues reported on its annual Worksheet.⁵⁵ A carrier's contribution to the TRS Fund is based upon its subject revenues for the prior calendar year and a contribution factor determined annually by the Commission.⁵⁶ Subject carriers must make TRS contributions on an annual basis, with certain exceptions.⁵⁷

19. Telrite reported inaccurate telecommunications revenue on its annual Worksheets filed March 31, 2006 and April 2, 2007. The inaccurate 2006 Form 499-A resulted in NECA assessing and Telrite paying a smaller TRS Fund contribution than it should have. Moreover, Telrite's 2007 Form 499-A annual Worksheet reported no revenue. As a result NECA did not invoice Telrite for any TRS Fund payment in July 2007. Telrite filed a revised 2007 annual Worksheet but not until July 12, 2007, more than three months after the revenue report was first due and a few days after Telrite should have received an invoice from NECA. Thus, Telrite was not billed for nor had it paid its TRS Fund obligation for 2007 by the July TRS Fund payment due date. Based on a preponderance of the evidence, we therefore find that Telrite has apparently violated section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully or repeatedly failing to make required TRS contributions.⁵⁸

D. Telrite Apparently Failed to Pay Its Numbering Administration Contributions

20. As a telecommunications carrier, Telrite must contribute to NANP cost recovery mechanisms on the basis of the end-user telecommunications revenues reported on its Form 499-A annual Worksheet.⁵⁹ Telrite reported inaccurate telecommunications revenue on its annual Worksheets filed on

⁵⁵ *Id.* See also 47 C.F.R. § 64.604(c)(5)(iii)(B) (setting forth methods of computation and payment of carrier contributions to TRS Fund).

⁵⁶ *Id.*

⁵⁷ *Id.* Under the Commission's rules, each subject carrier must contribute at least \$25 per year, and carriers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, carriers may divide their contributions into equal monthly payments. *Id.*

⁵⁸ 47 C.F.R. § 64.604(c)(5)(iii)(A). Although we propose forfeitures only for apparent violations from the execution of the tolling agreement to the present, we also note that Telrite apparently failed to make any regulatory contributions between 1995 and 2003 and we find this apparent noncompliance is relevant to the scope of Telrite's misconduct.

⁵⁹ *Id.* § 52.17(a). In particular, contributions to support numbering administration are based upon a carrier's end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually by the

(continued....)

March 31, 2006 and April 2, 2007. The inaccurate 2006 annual Worksheet resulted in NANPA assessing and Telrite paying a smaller NANP contribution than it should have. Moreover, for its 2007 obligation, Telrite was assessed the minimum NANP contribution permitted by our rules. Had its NANP contribution invoice been based on accurate revenue reported on Telrite's revised annual Worksheet dated July 12, 2007, Telrite's 2007 contribution would have been larger than the amount it was invoiced. Telrite has thus not paid the full amount of its obligation to the NANP administration for 2007. We therefore conclude that Telrite has apparently violated section 251(e)(2) of the Act and section 52.17(a) of the Commission's rules by willfully or repeatedly failing to make required NANP contributions in 2006 and 2007.

E. Telrite Apparent Failed to Pay Its Local Number Portability Contributions

21. As a telecommunications carrier, Telrite was obligated to contribute to local number portability ("LNP") cost recovery mechanisms on the basis of its end-user telecommunications revenues reported on its annual Worksheet.⁶⁰ Telrite reported inaccurate telecommunications revenue on its annual Worksheets filed on March 31, 2006 and April 2, 2007. The inaccurate 2006 annual Worksheet resulted in Neustar assessing and Telrite paying a smaller LNP Fund contribution than it should have. Moreover, Telrite's inaccurate 2007 annual Worksheet also resulted in a smaller LNP Fund payment. Telrite filed a revised annual Worksheet on July 12, 2007 but Neustar had already calculated Telrite's 2007 contribution based on the April Worksheet. Even though Telrite may have been paying the full amounts invoiced by Neustar, that amount was less than what it owed based on its actual revenue. Telrite has thus not paid the full amount of its obligation to the LNP fund for 2006 and 2007. We therefore conclude that Telrite has apparently violated section 251(e)(2) of the Act and section 52.32 of the Commission's rules by willfully or repeatedly failing to make required LNP contributions in 2006 and 2007.

F. Telrite Apparently Failed to Pay Its Regulatory Fees

22. As an interstate telephone service provider, Telrite was required to pay regulatory fees on the basis of its interstate and international end-user revenues reported on its Form 499-A annual Worksheet.⁶¹ Telrite reported inaccurate telecommunications revenue on its annual Worksheet filed March 31, 2006. The inaccurate 2006 annual Worksheet resulted in the FCC assessing and Telrite paying a smaller regulatory fee than it should have. We find that Telrite apparently violated sections 1.1154 and 1.1157(b)(1) of the Commission's rules by willfully or repeatedly failing to pay regulatory fees program payments when due.⁶²

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Chief of the Wireline Competition Bureau, but in no event will be less than \$25. *Id.* NANPA contributions are due on an annual basis, with certain exceptions.

⁶⁰ *Id.* § 52.32(a)

⁶¹ *See* 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

⁶² 47 U.S.C. § 159(a)(1); 47 C.F.R. §§ 1.1154, 1.1157. Payments of standard regulatory fees applicable to common carrier services must be filed in full on an annual basis. *Id.* § 1.1157(b)(1). Telrite's regulatory fee obligations for 2007 are not due until September 2007.

G. Proposed Forfeiture

23. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶³ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.⁶⁴ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁶⁵

24. Although Telrite made monthly payments to the USF covering the amounts invoiced by USAC, those invoiced amounts were based on Telrite’s inaccurate Worksheets filed with USAC, and Telrite should have been making significantly larger contributions. Based on the facts above, it appears that Telrite failed to make full contributions into the USF twenty-seven times beginning in 2006. Moreover, these separate violations continue today, and thus we may propose forfeitures for these apparent violations.⁶⁶ Payment of inaccurate universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier’s failure to make required universal service contributions frustrates Congress’ policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications service providers.⁶⁷

25. Generally, the Commission has established a base forfeiture amount of \$10,000 for each month in which a carrier has failed to fully pay required universal service contributions and \$20,000 for each month in which a carrier has failed to make any required universal service contribution,⁶⁸ plus an upward adjustment based on one-half of the company’s approximate unpaid contributions.⁶⁹ Although we have stated that each failure to make a full monthly payment to the USF constitutes a separate, continuing violation until the carrier pays its outstanding contributions, we have not sought to propose forfeitures on that basis. Instead, we have proposed forfeitures based solely on violations committed in the previous twelve month period. We have placed carriers on notice, however, that they face potential liability of as

⁶³ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

⁶⁴ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *see also Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

⁶⁵ 47 U.S.C. § 503(b)(2)(E).

⁶⁶ 47 U.S.C. § 503(b)(6)(B); *see also* 47 C.F.R. § 1.80(c)(3).

⁶⁷ 47 U.S.C. § 254(d).

⁶⁸ *See OCMC, Inc.*, Order of Forfeiture, 21 FCC Rcd 10479, 10482, ¶ 10 (2006) (“*OCMC Forfeiture Order*”); *Globcom NAL*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27; *Globcom Forfeiture Order*, 21 FCC Rcd 4710 at 4721-4724, ¶ 31-38.

⁶⁹ *See, e.g., Globcom Forfeiture Order*, 21 FCC Rcd at 4722, ¶ 33; *OCMC Forfeiture Order*, 21 FCC Rcd at 10482, ¶ 10. For similar reasons, we also apply an upward adjustment for TRS payments based on half of a company’s unpaid contributions. *Globcom NAL*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27.

much as the statutory maximum for each continuing violation of our USF contribution requirements.⁷⁰ Most recently, in the *Globcom Forfeiture Order*, we warned that “if the forfeiture methodology described herein is not adequate to deter violations of our USF and TRS rules, our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them.”⁷¹ Based on the facts of this case, as well as the accumulating record of non-compliance by other carriers, we find that it is now appropriate to impose such penalties.⁷²

26. The Commission has imposed increasingly larger forfeitures for USF violations because of the scope and scale of violations in this area.⁷³ Since January 1, 2006, the Commission has issued orders regarding more than \$3.15 million in proposed forfeitures and voluntary contributions for the nonpayment of contributions to USF and other programs.⁷⁴ Despite that aggressive enforcement, nonpayment into those programs remains a serious concern as demands on the USF have increased.⁷⁵

⁷⁰ See, e.g., *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, ¶ 35 (stating under the then applicable maximum forfeiture amount “the carrier had full notice under the APA that the maximum potential forfeiture for *each* violation could be as high as \$1,200,000”) (emphasis in original).

⁷¹ *Id.* at 4724, ¶ 38.

⁷² See also *VCI NAL*, 22 FCC Rcd 15933 at ¶ 24 & n.69.

⁷³ See, e.g., *Globcom Forfeiture Order*, 21 FCC Rcd at 4723-24, ¶¶ 36-37.

⁷⁴ See e.g., *Telus Communications, Inc.*, Order, 22 FCC Rcd 17251 (2007) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$450,000); *Verizon Business Global LLC f/k/a MCI, LLC*, Order, 22 FCC Rcd 12097 (2007) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$500,000); *Carrera Communication LP*, Order of Forfeiture, 22 FCC Rcd 9585 (2007) (imposing a \$345,900 forfeiture for, *inter alia*, failing to make required universal service contributions); *Teletronics, Inc.*, Order, 22 FCC Rcd 8681 (2007) (*Teletronics Consent Decree*) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$250,000); *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689 (2007) (proposing a new forfeiture of \$100,000 as part of the *Further Notice of Apparent Liability for Forfeiture* for apparent violations of the Act and the Commission’s rules); *Intelecom Solutions, Inc.*, Order, 21 FCC Rcd 14327 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$150,000); *Telecom House, Inc.*, Order, 21 FCC Rcd 10883 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$170,000); *Communication Services Integrated, Inc.*, Order, 21 FCC Rcd 10462 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$250,000); *Local Phone Services Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974 (2006) (proposing forfeiture of \$529,000 for apparent violations of USF related requirements); *FPL FiberNet, LLC*, Order, 21 FCC Rcd 8530 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$150,000); *Clear World Communications Corp.*, Order, 21 FCC Rcd 5304 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of \$290,000).

⁷⁵ See, e.g., *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007) (seeking comment on Federal-State Joint Board’s recommendation that the Commission take immediate action regarding increasing demand for USF monies for high-cost support); Written Statement of The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, Before the Committee on Commerce, Science & Transportation, U.S. Senate, February 1, 2007 at 7 (describing increasing pressure on the stability of the USF due to “[c]hanges in technology and increases in the number of carriers who are receiving universal service support”).

Clearly our previous forfeiture calculation methodology did not deter Telrite from attempting to avoid reporting accurate revenue and paying its full universal service contributions.

27. Accordingly, consistent with our previous statements that nonpayment of USF, TRS, and other contributions constitute continuing violations, and to effectively deter companies like Telrite from violating our rules governing payment into the USF, TRS, and other programs, our forfeiture calculations will reflect not only the violations that began within the last twelve months, but all such continuing violations. By including such violations in our forfeiture calculations, our enforcement actions now will provide increased deterrence and better reflect the full scope of the misconduct committed. As in previous orders, we warn carriers that if the forfeiture calculation methodology described here does not adequately deter violations of our rules, we will consider larger penalties within the scope of our authority, including substantially higher forfeitures and revocation of carriers' operating authority.⁷⁶

28. As a result, we propose a forfeiture of \$310,000 for Telrite's willful or repeated failure to contribute fully and timely to the USF on twenty-three occasions between January 2006 and the date of this *NAL* and for Telrite's willful or repeated failure to make any contribution to the USF on four occasions between November 2007 and the date of this *NAL*. Moreover, consistent with our approach for assessing liability for apparent USF violations, and taking into account all the factors enumerated in section 503(b)(2)(E) of the Act, we also propose an upward adjustment of \$417,438 [1/2 the largest balance due (due on February 15, 2008)], approximately one-half of the largest amount of Telrite's unpaid USF contributions due to USAC and the FCC, to our proposed base forfeiture. We therefore issue a total proposed forfeiture of \$727,438 against Telrite for its apparent willful or repeated failures to contribute fully to the USF.

29. We next find that Telrite's willful or repeated filing of inaccurate Worksheets is also egregious. A carrier's obligation to accurately file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF, TRS, NANP, LNP and regulatory fee programs. It is imperative that the Worksheets be accurate so that the Commission can be assured that payment obligations are correctly apportioned among all carriers consistent with the directives of the Communications Act and that the burdens are not improperly shifted from non-compliant to compliant carriers.⁷⁷ Although it is axiomatic that carriers are expected to file truthful information, the veracity of the information contained in the Worksheets is especially critical because the Commission does not audit each carrier's filing. Consequently, we determine that carriers must be deterred not only from underpaying contributions, but from submitting, in the first place, deceptive and inaccurate information to the Commission.

30. Telrite should have filed Worksheets when it first began providing telecommunications service in the United States. Although the Worksheets were due on specific dates, Telrite's failure to file accurate revenue figures had a continued harmful impact on various programs because the relevant fund administrators could not assess Telrite's payment obligations. Based on this conclusion, we therefore reconsider our previous position, as stated in the *Globcom Forfeiture Order*, that the statute of limitations under section 503(b)(2)(B) bars a forfeiture for the failure to file a Worksheet more than one year beyond the filing deadline.⁷⁸ Rather, Telrite's failures to file constitute continuing violations for which the statute

⁷⁶ See *Globcom Forfeiture Order*, 21 FCC Rcd at 4724, ¶ 38 & n.105.

⁷⁷ See 47 U.S.C. § 254(d).

⁷⁸ *Globcom Forfeiture Order*, 21 FCC Rcd at 4721 n.33 ("[W]e imposed an admonishment rather than a proposed forfeiture regarding the [Globcom's failure to file its Year] 2000 revenue information because the statute of

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of limitations for forfeiture does not begin to run until the violation is cured. Because of our previous position, however, we exercise our prosecutorial discretion here and decline to propose forfeitures for Telrite's failures to file Worksheets more than one year prior to the date of the NAL. We caution Telrite and other carriers that future enforcement actions may consider all failures to file Worksheets as continuing violations subject to forfeiture action.

31. As we noted above, a carrier's obligation to accurately file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF, TRS, NANP, LNP and regulatory fee programs. Telrite has avoided making full payment into these programs and has shifted to compliant carriers and their customers the economic costs associated with the administration of these programs. As noted above, in the past, the Commission has proposed a forfeiture of \$50,000 for failure to file a Worksheet or for filing an inaccurate Quarterly or annual Worksheet.⁷⁹ Accordingly, we find that Telrite is apparently liable for a \$50,000 forfeiture for filing an inaccurate quarterly Worksheet on May 22, 2007. We also find Telrite is apparently liable for a \$50,000 forfeiture for filing an inaccurate annual Worksheet on April 19, 2007. We therefore find Telrite is apparently liable for a total forfeiture of \$100,000 for filing inaccurate Worksheets.

32. We also find that Telrite has failed to make full TRS contributions, including failure to pay its TRS obligations in 2007. Where a carrier fails to satisfy its TRS obligations, it thwarts the purpose for which Congress established section 225(b)(1) of the Act and its implementing regulations -- to ensure that telecommunications relay services "are available to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."⁸⁰ The Commission has generally established a base forfeiture amount of \$10,000 for each instance in which a carrier fails to make required TRS contributions and an upward adjustment based on one-half of the company's approximate unpaid contributions at the time the investigation was initiated.⁸¹ Thus, for the reasons described above, we propose a \$20,000 forfeiture for Telrite's failure to fully pay its TRS Fund contributions in 2006 and 2007 and an upward adjustment of \$26,774, approximately one-half of Telrite's unpaid TRS Fund contributions resulting from the inaccurate 2007 Form 499-A. We therefore issue a total proposed forfeiture of \$46,774 against Telrite for its apparent willful or repeated failure to contribute fully to the TRS Fund.

33. We also find that Telrite apparently failed to make timely contributions toward NANP administration cost recovery mechanisms on the basis of its actual end-user telecommunications revenues. As with universal service and TRS, the failure of carriers to make required NANP administration contributions for an extended period of time severely hampers the Commission's ability to ensure that the cost of establishing telecommunications numbering administration arrangements is "borne by all telecommunications carriers on a competitively neutral basis" as Congress envisioned.⁸² Consequently,

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limitations for a forfeiture action had already elapsed." See also *Globcom NAL*, 18 FCC Rcd at 19902 n.63 ("Under section 503(b)(6) of the Act and section 1.80(c)(3) of the Commission's rules, the statute of limitations for this violation [the failure to file an annual Worksheet] is one year.").

⁷⁹ See *id.*

⁸⁰ 47 U.S.C. § 225(b)(1).

⁸¹ See *Globcom Forfeiture Order*, 21 FCC Rcd at 4721-24, ¶¶ 31-38.

⁸² 47 U.S.C. § 251(e)(2).

and consistent with precedent,⁸³ we find that Telrite is apparently liable for the base forfeiture of \$20,000 for failing to timely pay contributions toward NANP administration cost recovery mechanisms for 2006 and 2007.⁸⁴

34. We also conclude that Telrite apparently failed to make full contributions toward LNP cost recovery mechanisms on the basis of its actual end-user telecommunications revenues. As with NANP, the failure of carriers to make required LNP contributions for an extended period of time severely hampers the Commission's ability to ensure that the cost of establishing number portability arrangements are "borne by all telecommunications carriers on a competitively neutral basis" as Congress envisioned.⁸⁵ As noted above, the Commission previously prescribed a \$10,000 base forfeiture amount for failure to pay NANP contributions -- we find that the failure to make LNP contributions is analogous. We find Telrite is apparently liable for a forfeiture of \$20,000 for its failure to make full LNP payments in 2006 and 2007.

35. We finally conclude that Telrite has apparently failed to fully pay its regulatory fee obligations to the Commission. A carrier's failure to contribute toward the costs of certain regulatory activities from which it benefits undermines the efficiency, equitability, and effectiveness of the regulatory fee program and accomplishment of Congress' objectives in section 9(a)(1) of the Act. Telrite's violation for failing to fully pay its regulatory fee obligation is continuing until fully paid. The Commission has established a base forfeiture amount of \$10,000 for failure to make required regulatory fee payments.⁸⁶ We, therefore, find Telrite apparently liable for a \$10,000 forfeiture for its apparent violation of sections 1.1154 and 1.1157 of the Commission's rules.

IV. CONCLUSION

36. In light of the seriousness, duration and scope of the apparent violations, we find that a proposed forfeiture in the amount of \$924,212 is warranted. As discussed, this proposed forfeiture amount includes a total proposed forfeiture of \$727,438 for Telrite's failure to fully pay its USF obligations, a total proposed forfeiture of \$100,000 for Telrite's failure to file accurate Telecommunications Reporting Worksheets, a total proposed forfeiture of \$46,774 for Telrite's failure to make TRS contributions, a total proposed forfeiture of \$20,000 for Telrite's apparent failure to make NANP contributions, a total proposed forfeiture of \$20,000 for Telrite's apparent failure to make LNP contributions, and a total proposed forfeiture of \$10,000 for Telrite's apparent failure to make ITSP regulatory fee payment to the Commission.

37. We caution that additional violations of the Act or the Commission's rules could subject Telrite to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of Telrite's operating authority, including disqualification of Telrite's

⁸³ *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13291, 13303, ¶ 35 (2005) (*Teletronics NAL*) (finding that the carrier was apparently liable for a forfeiture of \$10,000 for the carrier's failure to make its NANP administration contribution), *consent decree entered, Teletronics Consent Decree*, 22 FCC Rcd 8681.

⁸⁴ *See, e.g., Teletronics NAL*, 20 FCC Rcd at 13304, ¶ 35.

⁸⁵ 47 U.S.C. § 251(e)(2).

⁸⁶ *See Teletronics NAL*, 20 FCC Rcd at 13303-04, ¶ 36; *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13318-19, ¶ 30 (2005).

principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁸⁷ In addition, we note that, to the extent Telrite is found to be delinquent on any debt owed to the Commission (e.g., has failed to pay all of its TRS contributions), the Commission will not act on, and may dismiss, any application or request for authorization filed by Telrite, in accordance with the agency's "red light" rules.⁸⁸

V. ORDERING CLAUSES

38. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Telrite Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$924,212 for willfully and repeatedly violating the Act and the Commission's rules.

39. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁸⁹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Telrite Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

40. IT IS FURTHER ORDERED THAT Telrite shall submit within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, a report supported by a sworn statement or declaration under penalty of perjury of a corporate officer setting forth in detail its plan to come into compliance with the reporting and payment obligations discussed herein. The report must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554; e-mail address: hillary.denigro@fcc.gov.

41. IT IS FURTHER ORDERED THAT Telrite shall file with the Universal Service Administrative Company within thirty days annual Worksheets reporting accurate annual revenue for 2005.

42. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625,

⁸⁷ See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

⁸⁸ 47 C.F.R. § 1.1910.

⁸⁹ See 47 C.F.R. § 1.1914.

Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

43. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554; e-mail address: hillary.denigro@fcc.gov. The response must include the NAL/Acct. No. referenced above.

44. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

45. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. For answers to questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov.⁹⁰

46. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE shall be sent by certified mail, return receipt requested, to Michael Geoffroy, Telrite Corporation, Post Office Box 2207, Covington, Georgia 30015.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹⁰ See 47 C.F.R. § 1.1914.